

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court.

*Matthews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on April 18, 2005. Subsequently, on April 27, 2005, Plaintiff filed his objections to the Report. The Court has made a *de novo* review of those portions to which Petitioner has objected, but finds the objections to be without merit. Therefore, for the reasons set forth in the Magistrate Judge's comprehensive and well-reasoned Report, the Court will order that the petition be dismissed *without prejudice*.<sup>1</sup>

### III. CONCLUSION

Having conducted a thorough review of the Report and the objections pursuant to the standard set forth above, the Court overrules Petitioner's objections, adopts the Report to the extent that it does not contradict this Order and incorporates it herein. Accordingly it is the judgment of this Court that the petition is **DISMISSED** *without prejudice* and without requiring Respondents to file a return. In light of this ruling, the remaining motions presently pending in this case are rendered **MOOT**.

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<sup>1</sup>The Court notes, however, that although the limitations period had been running for less than four months at the time the Report was filed, (Report at 11), it has now been running for much longer than that. Nevertheless, the fact remains that this is a mixed petition. Therefore, since there are no special circumstances presented here on which to find otherwise, this action must be dismissed.

**IT IS SO ORDERED.**

Signed this 19<sup>th</sup> day of January, 2006, in Spartanburg, South Carolina.

s/ Henry F. Floyd  
HENRY F. FLOYD  
UNITED STATES DISTRICT JUDGE

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**NOTICE OF RIGHT TO APPEAL**

Petitioner is hereby notified that he has a right to appeal this Order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.